River Parish Maintenance, Inc. *and* Construction and General Labors Union, Local 1177, AFL–CIO, Petitioner. Case 15–RC–8062

May 19, 1998

DECISION AND DIRECTION

BY CHAIRMAN GOULD AND MEMBERS FOX AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered determinative challenges and objections in an election held July 24, 1997, and the hearing officer's report recommending disposition of them (pertinent parts are attached as an appendix). The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 20 for and 18 against the Petitioner, with 7 challenged ballots.

The Board has reviewed the record in light of the exceptions[1] and briefs and has adopted the hearing officer's findings and recommendations as modified.

In adopting the hearing officer's recommendation to set aside the election on the basis of Objection 10, we find that the Employer's holding of an offsite ''crab boil'' for employees 2 days before the election, and paying them for their attendance, was objectionable under the principles set out in *B & D Plastics*, 302 NLRB 245 (1991). We note in particular that the Employer required all but four unit employees to attend its offsite campaign meeting from 3:15 until 4 p.m., which was the employees' regular quitting time, and then paid the employees an extra hour's pay to attend the ''crab boil'' from 4 to 5 p.m. The Employer has advanced no business reason unrelated to the election that might justify this grant of benefit. Under these circumstances, as in *B & D Plastics*, the Employer's grant to employees of a bonus for no reason other than the upcoming election constitutes objectionable conduct sufficient to require that the election be set aside. Contrary to our dissenting colleague's assertion, the basis of our finding that the Employer engaged in objectionable conduct is not that the Employer held the ''crab boil'' offsite but rather that the employees could reasonably have viewed their receipt of an extra hour's pay as intended to influence their votes in favor of the Employer's position.[2]

DIRECTION

IT IS DIRECTED that this proceeding is remanded to the Regional Director for further appropriate action.

MEMBER HURTGEN, dissenting in part.

Unlike my colleagues and the hearing officer, I would overrule the Petitioner's Objections 9 and 10.[1]

In sustaining Objection 9, the hearing officer concluded that the Employer provided a benefit to employees by permitting them, before the election, to ''run a tab'' for meals in the cafeteria at the Employer's site. The evidence fails to support a finding of objectionable conduct. As the hearing officer noted, a few employees were told by a cafeteria worker, who was not an employee of the Employer, that they could charge their meals. There was no evidence that the Employer authorized this statement or even knew about it. Nor did any Employer officials tell the employees about any tab. My colleagues understandably do not rely on the hearing officer's findings regarding Objection 9. The evidence falls far short of showing a conferral of benefits by the Employer.

Petitioner's Objection 10 is based on the Employer's sponsoring a campaign meeting at a hotel 2 days before the election. Employees were released early from work to attend the meeting, and those who attended were paid for their time. The meeting lasted from 3:15 to 5 p.m. The Employer provided employees with free food and drink at the function. Employees were required to attend from 3:15 to 4 p.m., inasmuch as 4 p.m. was the regular quitting time. Employees who chose to stay until 5 p.m. were paid for the extra hour.

Clearly, it was not objectionable to pay employees their wages from 3:15 to 4 p.m. Employers are permitted to hold campaign meetings during worktime and to pay employees for that time. In essence, an employer pays employees for a day's service. If the employer chooses to have employees spend a portion of that day listening to a campaign speech, that is a legitimate prerogative of the employer. Further, based on

[1] The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

Further, in the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule the Petitioner's Objections 1 and 8 and the challenged ballot of Lazarus Turner.

[2] In light of our sustaining the Petitioner's Objection 10, we find it unnecessary to pass on the hearing officer's analysis or determination regarding the Petitioner's Objection 9.

[1] Initially, I note that, as the Employer contends, the hearing officer sustained both these objections on theories different from those set forth in the objections. Both these objections were premised on allegations that the Employer discriminated between union supporters and nonsupporters. The evidence does not support a finding of such discrimination. The hearing officer nonetheless proceeded to consider these objections in terms of a conferral of benefits on all employees.

this same rationale, it makes no difference whether the speech is onsite or offsite.[2]

Nor was it objectionable to pay the employees from 4 to 5 p.m. In this regard, I note that the first portion of the event (3:15 to 4 p.m.) cannot realistically be separated from the ''Crab Boil'' portion of the event (4 to 5 p.m.). Indeed, as my colleagues apparently concede, both portions were part and parcel of the Employer's campaign. It is not unlawful to offer inducements (e.g., food, prizes) to induce employees to come to campaign meetings, so long as the monetary value thereof is reasonable.[3] In my view, the payment of 1 hour's wages, along with food and drink, is not an unreasonable inducement.[4]

B & D Plastics, 302 NLRB 245 (1991), is clearly distinguishable. In that case, the employees were given the entire day off, and they were paid irrespective of whether they attended the function. In sum, the employees received a gift equal to a full day's pay. By contrast, in the instant case, the employees were paid for 1-3/4 hours and only if they attended the function.

[2] In the instant case, the meeting was held offsite because the property-owner would not permit the Employer to hold the meeting onsite.

[3] See, e.g., *L.M. Berry and Co.*, 266 NLRB 47, 51 (1983); *Fashion Fair, Inc.*, 157 NLRB 1645 fn. 3 (1966); *Lloyd A. Fry Roofing Co.*, 123 NLRB 86, 87–88 (1959).

[4] My colleague's characterize the 1 hour's pay as a ''bonus.'' They do not contend that it is a substantial amount of money. Clearly, the average reasonable employee would not regard it as such. One hour's pay in this case ranges from $6 to $12.

APPENDIX

HEARING OFFICER'S REPORT AND RECOMMENDATIONS ON OBJECTIONS AND CHALLENGES

Objections 9 and 10

Objection 9 alleges that RPM allowed employees to run a tab in the plant cafeteria and then required employees who supported the Union to pay back their charges while not requiring those employees who did not support the Union to do so. In support of this objection, the Petitioner presented Chris Seymore, Patrick Washington, and Darrel White who testified that they charged meals on a tab in the plant cafeteria after being told by the cashier who is not an RPM employee that RPM had a tab that employees could charge their purchases on. There was no evidence that RPM authorized this tab for employees and there was no evidence that any representative of RPM told any employee about this tab. There was, likewise, no evidence that any employee was required to pay back the cost of any purchase made on the tab. Received into evidence was a ''Guest Check'' produced pursuant to a subpoena that the parties stipulated was signed by Mark Roussel, RPM's manager of field operations. The item was described by Patrick Washington as similar to the tab that he saw at the cafeteria cashier counter. The ''Guest Check'' was for 18 items, for a total of $42.41. It had Mark Roussel and Tonna 635-5023 RPM at the top with the charged amounts under that and Mark Roussel's signature at the bottom. The highest charge was $4.99 and the lowest was $0.50. The charge also had Wed at the top. Patrick Washington testified that he charged his breakfast and lunch on RPM's tab the day he was told about it and thought it was about 1 week prior to the election. He was told by the cashier it was for all RPM employees for the week. Washington admitted that he had prounion sentiments and he was not required to pay back the charges he put on RPM's tab at the cafeteria. The employees were not required to sign anything and RPM had no way to identify who used the tab.

Chris Seymore testified that since he had been there from 1992 until present, the RPM or Entergy had bought food for the employees four or five times during the day. He also testified to a lunch bought by RPM a few days prior to the election at a restaurant offsite. He stated that RPM had thrown parties in the past. RPM presented no evidence in regard to the tab at the cafeteria.

Objection 10 alleges that on or about July 22, RPM permitted employees to attend a crab boil during worktime, but it refused known union adherents the same benefit. In support of this objection, the Petitioner presented Chris Seymore who testified that there was a crab boil on July 22. RPM released all its employees at 3:15 p.m. to attend the crab boil except its Foremen Darrel White, Sergio Dukes and Inspector Lazarus Turner who were not allowed to leave the facility until 4 p.m. Chris Seymore was also required to stay until 4 p.m. but he did not attend the crab boil because he had to attend a class after work. The Employer contends that all employees were invited to the crab boil but due to coverage of work at the facility, the above employees were not allowed to leave the facility until 4 p.m. RPM admits that all employees were paid for attending the Crab Boil from 3:15 until 5 p.m. Seymore contends that he and the other formen were not paid for the extra time to attend the crab boil. RPM presented no reason for having the crab boil 2 days prior to the election.

The Board has an objective standard in determining whether preelection benefits would tend unlawfully to influence the outcome of the election. The Board considers (1) the size of the benefit conferred in relation to the stated purpose for granting it; (2) the number of employees receiving it; (3) how employees reasonably would view the purpose of the benefit; and (4) the timing of the benefit. *Gulf States Canners*, 242 NLRB 1326 (1979). Here, the size of the benefit is the value of the crab boil and the 1 hour and 45 minutes of pay to all employees with the exception of the foremen and inspector who did not attend until after work and the value of the tab in the cafeteria. RPM gave no reason for the tab or the crab boil and cited no cases to support its argument that Petitioner's Objections 9 and 10 were without merit.

Here, as in *B & D Plastics*, 302 NLRB (1991), employees could reasonably have viewed this conduct as intended to influence their votes in favor of the Employer's position. They were offered the value of the meals as well as the 1 hour and 45 minutes of paid time as a bonus within 2 days of the election. Without any explanation from RPM as to the reason for the crab boil 2 days prior to the election, this is a benefit that requires the election results to be overturned. Although there were some evidence that RPM had in the past given some food to the employees, there was no explanation as to

the timing of the tab, lunch, or the crab boil. There was no evidence presented by RPM that it had granted paid time off for its employees to attend a meeting and meal off the premises in the past. *Speco Corp.*, 298 NLRB 439 fn. 2 (1990). Therefore, the timing of this benefit is such that the employees could assume that it was given to influence their vote for the Employer.

Accordingly, I recommend that Petitioner's Objections 9 and 10 be sustained.